

DEC. 10. 1991

In The
Supreme Court of the United States
October Term, 1991

OFFICE OF THE CLERK

UNITED STATES DEPARTMENT OF COMMERCE;
ROBERT A. MOSBACHER, Secretary of the United
States Department of Commerce; BUREAU OF THE
CENSUS; BARBARA EVERITT BRYANT, Director of
the Bureau of the Census; and DONNALD K.
ANDERSON, Clerk of the United States
House of Representatives,

Appellants,

vs.

THE STATE OF MONTANA; STAN STEPHENS,
Governor of the State of Montana; MARC RACICOT,
Attorney General for the State of Montana; MIKE
COONEY, Secretary of State for the State of Montana;
MAX BAUCUS, United States Senator; CONRAD
BURNS, United States Senator; PAT WILLIAMS, United
States Representative; and RON MARLENEE,
United States Representative,

Appellees.

On Appeal From the United States District Court
For The District Of Montana

APPELLEES' RESPONSE TO BRIEF OF
THE COMMONWEALTH OF MASSACHUSETTS

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December 1991

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The appellees respectfully submit this response to the brief of *amicus curiae* Commonwealth of Massachusetts opposing appellees' request for an expedited briefing schedule and oral argument.

The Commonwealth requests the Court to postpone consideration of the appeal in this matter pending a ruling by the three-judge district court in *Commonwealth of Massachusetts, et al., v. Mosbacher, et al.*, CA No. 91-11234-WD (D. Mass.). The Commonwealth asserts that without the benefit of the ruling in the *Massachusetts* case

the Court will be deprived of valuable information that may assist resolution of the issues in this case. Although it agrees with the appellees' position on the issues of justiciability, standing, and the applicability of the "one person, one vote" standard to apportionment of seats in the United States House of Representatives among the several states, the Commonwealth nonetheless argues that the issues involved in the instant appeal may not be fully developed without consideration of the standards it has advocated in its pending litigation.

This case does not afford the luxury of time that the Commonwealth demands. The 1992 congressional elections are fast approaching, and the membership of the House is in question for the 103rd Congress and for subsequent Congresses. The parties to this appeal are in agreement that the case should be resolved as quickly as possible. As the appellants suggest in their Jurisdictional Statement, prompt review is "especially warranted to avoid the possibility of inconsistent judgments regarding the constitutionality of the statutory formula for apportioning Representatives among *all* the States." (J.S. at 25; emphasis in original.)

Furthermore, the Commonwealth has the opportunity to present its views to the Court as an *amicus curiae*. See S. Ct. R. 37.5. There is no reason to believe that the Commonwealth could offer more enlightenment to the Court as a party than it could offer as an *amicus*. The briefing schedule proposed by the parties allows ample time for Massachusetts to submit an *amicus curiae* brief raising the points it believes should be brought to the Court's attention. Under the parties' proposed schedule, the opening brief of appellants would not be due until January 15, 1992, with a response by appellees due February 12, 1992.

Arguments on the parties' cross-motions for summary judgment were heard before the three-judge district court

in the *Massachusetts* case on December 6, 1991. No cause exists to delay the schedule in the instant appeal while the *Massachusetts* case awaits district court resolution. The temporal exigency of the issues here simply does not allow this matter to linger.

Accordingly, should the Court note probable jurisdiction, appellees request that the proposed briefing schedule be adopted and the matter be calendared for oral argument during the February, 1992, argument calendar.

Respectfully submitted,

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